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VIA ECF

June 3, 2013

Chief Judge Gary L. Sharpe
James T. Foley - U.S. Courthouse
445 Broadway, Room 441
Albany, NY 12207

Re: *Jacoby et al v. Blitz USA, Inc.* (Case No. 1:11mc50, Underlying Case No.: 1:10-cv-3075, District of Oregon)

Dear Judge Sharpe:

We represent non-party Kinderhook Industries, LLC in the above captioned matter and write in response to your text only order issued May 31, 2013. We respectfully apologize to the Court for failing to submit a timely status update on May 21, 2013 as ordered.

On May 31, 2011, plaintiff Robert Jacoby served a Subpoena to Testify on non-party Kinderhook Industries, LLC with respect to *Jacoby et al v. Blitz USA, Inc.*, Case No.: 1:10-cv-3075, United States District Court for the District of Oregon ("the Underlying Case"). On June 17, 2011, Kinderhook Industries, LLC filed a Motion to Quash in this Court. [See Dkt. No. 1.]

Decision on the Motion was initially deferred due to court-ordered mediation taking place in the Underlying Case. [See Dkt. Entry dated October 18, 2011.] Decision of the Motion is currently stayed pending resolution of bankruptcy proceedings that were commenced by the defendant in the Underlying Case, Blitz U.S.A., Inc., in the United States Bankruptcy Court for the District of Delaware in November 2011 (the "Bankruptcy Proceedings"). [See Dkt. Nos. 11, 12.] On November 22, 2011, following the Notice of Suggestion of Bankruptcy filed by Blitz U.S.A. in the Underlying Case and Automatic Stay of Proceedings, Magistrate Judge Mark D. Clarke ordered that all pending deadlines and hearings in the Underlying Case be terminated

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pending the stay of the case and the outcome of Bankruptcy Proceedings. [See Docket of the Underlying Case, Dkt. No. 124.] This order remains in place. [See Docket of the Underlying Case.]¹

On December 21, 2012, we submitted a report regarding the status of the Bankruptcy Proceedings and, on December 26, 2012, the Court ordered the parties to provide another update on May 21, 2013. As of June 3, 2013, Blitz U.S.A., Inc. remains in Chapter 11 proceedings. The United States Bankruptcy Court for the District of Delaware has not granted relief from the automatic stay in the Underlying Case. Kinderhook Industries, LLC will file a new status report on November 21, 2013 or in the event of a change in status with respect to the Bankruptcy Proceedings or the Underlying Case.

Because the status of the Bankruptcy Proceedings and Underlying Case currently remain unchanged, we respectfully request that Kinderhook Industries, LLC's Motion to Quash remain stayed unless and until a decision on such is required.

Respectfully,



Pamila Gudkov

cc: Thomas N. Peterson, Esq. (via US Mail)
Diane Breneman, Esq. (via US Mail)
John Tippet, Esq. (via US Mail)

¹ On April 19, 2013, a Defendant in the Underlying case, Discovery Plastics, LLC, entered into a settlement agreement with Plaintiff and moved that that stay be lifted as to claims against it and that it be dismissed. [Docket of the Underlying Case, Dkt. No. 125.] The Court in the Underlying Case granted that motion. [*Id.*, Dkt. No. 126.] Otherwise, there have been no updates to the docket of the Underlying Case since the November 22, 2012 order staying the case.